

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRAME KALI KANONGATA'A,
Petitioner,
v.
SCOTT JONES,
Respondent.

No. 2:20-cv-0973 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a county detainee proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Before the court is petitioner's petition for screening and petitioner's motion to proceed in forma pauperis. Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. For the reasons set forth below, this court will recommend the petition be dismissed for petitioner's failure to exhaust state remedies.

SCREENING

Rule 4 of the Rules Governing § 2254 Cases requires the court to make a preliminary review of each petition for writ of habeas corpus. The court must dismiss a petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4, Rules Governing § 2254 Cases; Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Petitioner alleges that he plead no contest and was convicted in 2016 on various charges. He received a five-year

suspended sentence and probation. It appears that he has now been detained on a charge that he violated his probation. Petitioner seeks to challenge the 2016 conviction and sentence. He also argues that his bail is excessive in violation of the Eighth Amendment.

I. Challenge to 2016 Conviction and Sentence

Petitioner's challenge to his existing conviction and sentence should be raised in a habeas corpus petition under 28 U.S.C. § 2254. Section 2254(a) provides for federal court consideration of petitions where the petitioner is "in custody pursuant to the judgment of a State court" and challenges his custody on the grounds that it violates "the Constitution or laws or treaties of the United States."

The exhaustion of state court remedies is a prerequisite to granting a petition for writ of habeas corpus under § 2254. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985).

After reviewing the petition for habeas corpus, this court finds that petitioner has failed to exhaust state court remedies. Petitioner concedes that the claims have not been presented to the California Supreme Court. (ECF No. 1 at 2-6.) Further, there is no allegation that state court remedies are no longer available to petitioner. Accordingly, petitioner's claims challenging his 2016 conviction and sentence should be dismissed without prejudice.¹

II. Challenge to Bail

When a pretrial detainee challenges a bail determination, the Supreme Court and Ninth Circuit have held that a writ of habeas corpus under 28 U.S.C. § 2241 is an appropriate remedy. Stack v. Boyle, 342 U.S. 1, 6-7 (1951); Arevalo v. Hennessy, 882 F.3d 763, 767 (9th Cir. 2018). Although habeas petitions challenging pretrial detention under § 2241 are not subject to a

¹ Petitioner is cautioned that the habeas corpus statute imposes a one-year statute of limitations for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period will start to run on the date on which the state court judgment became final by the conclusion of direct review or the expiration of time for seeking direct review, although the statute of limitations is tolled while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C. § 2244(d).

1 statutory exhaustion requirement, principles of federalism and comity require federal courts to
2 abstain from hearing pretrial habeas challenges unless the petitioner has first exhausted available
3 state judicial remedies. Carden v. Montana, 626 F.2d 82, 83-84 & n.1 (9th Cir. 1980) ; see also
4 Laing v. Ashcroft, 370 F.3d 994, 997 (9th Cir. 2004) (“[W]e require, as a prudential matter, that
5 habeas petitioners exhaust available judicial ... remedies before seeking relief under § 2241.”
6 (internal quotation and citation omitted)). “Where a petitioner seeks pre-conviction habeas relief,
7 this exhaustion prerequisite serves two purposes: (1) to avoid isolating state courts from federal
8 constitutional issues by assuring those courts an ample opportunity to consider constitutional
9 claims; and (2) to prevent federal interference with state adjudication, especially state criminal
10 trials.” Carden, 626 F.2d at 83. Courts frequently refer to this exhaustion requirement as
11 Younger abstention in recognition of the Supreme Court’s decision in Younger v. Harris, 401
12 U.S. 37 (1971), that federal courts should abstain from interfering in pending state criminal
13 proceedings.

14 Satisfying the exhaustion requirement for the bail claim is the same process as satisfying
15 the exhaustion requirement for petitioner’s challenge to his 2016 conviction. Petitioner must
16 fairly present his claims to the state courts in accordance with the state’s procedures. He may not
17 proceed in federal court until the California Supreme Court has considered, and rejected, his
18 claims. Petitioner concedes in his petition that he has not done so.

19 Further, nothing about petitioner’s allegations demonstrates that he should be entitled to
20 an exception to the exhaustion requirement. The Supreme Court has carved out an exception for
21 “special circumstances” which are limited to “cases of proven harassment or prosecutions
22 undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps
23 in other extraordinary circumstances where irreparable injury can be shown is federal injunctive
24 relief against pending state prosecutions appropriate.” Perez v. Ledesma, 401 U.S. 82, 85 (1971).

25 While petitioner alleges he is suffering financial injuries due to his inability to make bail,
26 those injuries are “incidental to every criminal proceeding brought lawfully and in good faith,”
27 and, therefore, do not constitute an irreparable injury in the legal sense. See Younger, 401 U.S. at
28 49. Many courts have held that an excessive bail claim does not meet the special circumstance

standards. See, e.g., Dudley v. Niell, No. 3:15-CV-1434-D-BK, 2015 WL 6855635, at *4 (N.D. Tex. Oct. 9, 2015), rep. and reco. adopted, 2015 WL 6809296 (N.D. Tex. Nov. 6, 2015) (“[A] challenge to the reasonableness of a pretrial bond is cognizable in a federal habeas corpus action after exhaustion of state court remedies.”); Lazarus v. Baca, No. CV 10-1423 GHK (FFM), 2010 WL 1006572, at *6 (C.D. Cal. Mar. 17, 2010) (court abstains from considering bail claim prior to exhaustion in state court, noting “state proceedings provide petitioner with an adequate opportunity to litigate her constitutional claims.”), aff’d, 389 F. App’x 700 (9th Cir. 2010); Peterson v. Contra Costa County Sup.Ct., No. C03–5534 MMC (PR), 2004 WL 443457, at *1-2 (N.D. Cal. Mar. 2, 2004) (dismissing on Younger grounds pretrial detainee’s claim under 42 U.S.C. § 1983 of violation of right to reasonable bail). Petitioner’s situation does not involve the “unusual circumstances” that might justify an exception to Younger abstention. See Carden, 626 F.2d at 83-34. For these reasons, petitioner’s claim regarding excessive bail should be dismissed without prejudice as well.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Petitioner’s motion to proceed in forma pauperis (ECF No. 5) is granted; and
2. The Clerk of the Court shall randomly assign a district judge to this case.

Further, IT IS RECOMMENDED that petitioner’s petition for a writ of habeas corpus be dismissed without prejudice.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after being served with these findings and recommendations, petitioner may file written objections with the court and serve a copy on all parties. The document should be captioned “Objections to Magistrate Judge's Findings and Recommendations.” Petitioner is advised that failure to file objections within the specified time may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). In the objections, petitioner may address whether a certificate of appealability should issue in the event an appeal of the judgment in this

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case is filed. See Rule 11, Rules Governing § 2254 Cases (the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant).

Dated: July 7, 2020


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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